



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2018-0443]

RIN 1625-AA09

Drawbridge Operation Regulation; Technical Amendment; Removal of Obsolete Drawbridge Operating Regulations

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is removing the existing operation regulations for 33 drawbridges across various waterways and in various locations, across the east coast and western rivers of the United States. These drawbridges have either been replaced with a fixed bridge, removed from the waterway, altered with CG approval in such a manner that the drawspan is no longer moveable or the approaching rail lines or roadways have been removed with the drawspan open to navigation and inoperable. These 33 operating regulations are no longer applicable or necessary.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0443. In the “SEARCH”

box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Chris Jaufmann, Office of Bridge Programs; United States Coast Guard Headquarters; telephone 202-372-1512, e-mail Josef.C.Jaufmann@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department Of Homeland Security
FR	<b>Federal Register</b>
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that notice and comment procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) due to the fact that the 33 drawbridges identified either do not exist or no longer function as a drawbridge. Therefore, their regulations are no longer applicable and need to be removed. It is unnecessary to publish a NPRM because drawbridge regulations are only used for bridges that have an operational span that is intended to be opened for the passage of waterway traffic. These bridges are no longer operational.

For the same reasons stated in the preceding paragraph, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. The bridges at issue no longer have an operational span and therefore have no need of a drawbridge regulation. The removal of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The elimination of these drawbridges necessitates the removal of their corresponding drawbridge operation regulation in 33 CFR part 117 subpart B.

### **IV. Discussion of Final Rule**

The Coast Guard is removing restrictions and the regulatory burdens related to the draw operations for these 33 bridges that no longer function as drawbridges. In the regulatory section of this final rule, the 33 bridges are presented numerically based on their section number and, if applicable, paragraph lettering under 33 CFR part 117 subpart B.

This final rule will update 33 CFR part 117 subpart B by removing language that governs the operating schedule of the aforementioned bridges, which in fact, in their current state, are no longer drawbridges. The removal of these obsolete regulations will not affect waterway or land traffic.

The following bridges remain across their respective waterways and remain in use in their transportation function, however; have been converted to fixed bridges:

- §117.125(b) Black River; Black Rock, AR; Burlington Northern RR Bridge;

Mile 68.4; Eighth Coast Guard District.

- §117.125(c) Black River; Pocahontas, AR; Arkansas State HWY Dept. Bridge; Mile 90.1; Eighth Coast Guard District.
- §117.125(e) Black River; Corning, AR; Union Pacific RR Bridge; Mile 144.4; Eighth Coast Guard District.
- §117.125(f) Black River; Corning, AR; Arkansas State HWY Dept. Bridge; Mile 152.2; Eighth Coast Guard District.
- §117.127 Current River; Biggers, AR; Arkansas Highway Bridge; Mile 10.2; Eighth Coast Guard District
- §117.527 Kennebunk River; Between Kennebunk and Kennebunkport, ME; Dock Square Drawbridge; Mile 1; First Coast Guard District.
- §117.591(b) Charles River and its Tributaries; Boston, MA; Charleston Bridge; Mile 0.4; First Coast Guard District.
- §117.609(b) Mystic River; Somerville, MA; Wellington Bridge; Mile 2.5; First Coast Guard District.
- §117.613 North River; Norwell, MA; Plymouth County (Bridge Street) Bridge; Mile 4.0; First Coast Guard District.
- §117.738 Overpeck Creek; Ridgefield Park; Conrail and the New York, Susquehanna and Western Railroad Bridges; Mile 0.0; First Coast Guard District.

The following bridges are no longer functional drawbridges. These bridges have either had their operable drawspan removed or the bridge was removed in whole from the waterway:

- §117.125(d) Black River; Pocahontas, AR; Burlington Northern RR Bridge; Mile

90.4; Eighth Coast Guard District.

- §117.127 Current River; Biggers, AR; Burlington Northern RR Bridge; Mile 12.2; Eighth Coast Guard District.
- §117.272 Boot Key Harbor; Between Marathon and Boot Key, FL; Boot Key Harbor Drawbridge; Mile 0.13; Seventh Coast Guard District.
- §117.531(c)(2) Piscataqua River; Portsmouth, ME; Sarah M. Long (Route 1 Bypass) Secondary Recreation Draw; Mile 2.5; First Coast Guard District.
- §117.599 Fort Point Channel; Boston, MA; Northern Avenue Bridge; Mile 0.1; First Coast Guard District.
- §117.601 Malden River; Between Medford and Everett, MA; S16 Bridge; Mile 0.3; First Coast Guard District.

The following bridges remain in the waterway and are open to navigation.

However, the rail line, including the bridge, are no longer in use.

- §117.139(a) White River; DeValls Bluff; AR; Chicago, Rock Island and Pacific Railroad Bridge; Mile 122; Eighth Coast Guard District
- §117.521 Back Cove; Portland, ME; Canadian National Railroad Bridge; Mile 0.2; First Coast Guard District.
- §117.605(b) Merrimack River; Newburyport, MA; Massachusetts Bay Transportation Authority (MBTA) Railroad Bridge; Mile 3.4; First Coast Guard District.

The following drawbridges have been removed from the waterway and replaced with fixed bridges:

- §117.139(a) White River; DeValls Bluff, AR; US70 Highway Bridge; Mile 121.7;

- First Coast Guard District.
- §117.261(b) Atlantic Intracoastal Waterway from St. Mary's River to Key Largo; Jacksonville Beach, FL; McCormick Bridge; Mile 747.5; Seventh Coast Guard District.
  - §117.261(qq) Atlantic Intracoastal Waterway from St. Mary's River to Key Largo; Key Largo, FL; Jewfish Creek; Mile 1134; Seventh Coast Guard District.
  - §117.287(i) Gulf Intracoastal Waterway; Clearwater, FL; Belleair Beach Drawbridge; Mile 131.8; Seventh Coast Guard District.
  - §117.309 Nassau Sound; Between Amelia Island and Talbot Island, FL; Fernandina Port Authority (SR-A-1-A) Bridge; Mile 0.4; Seventh Coast Guard District.
  - §117.317(j) Okeechobee Waterway; Punta Rassa, FL; Sanibel Causeway Bridge; Mile 151; Seventh Coast Guard District.
  - §117.483 Ouachita River; Harrisonburg, LA; S8 Bridge; Mile 57.5; Eight Coast Guard District
  - §117.529 Narraguagus River; Millbridge, ME; Highway Bridge; Mile 1.8; First Coast Guard District.
  - §117.739(n)(1) Passaic River; Wallington, NJ; Gregory Avenue Bridge; Mile 14; First Coast Guard District.
  - §117.779 Eastchester Bay (Arm of); Between Rodman Neck and City Island, NY; Highway Bridge; Mile 2.2; First Coast Guard District.
  - §117.805 Peekskill (Annsville) Creek; Peekskill, NY; Conrail Bridge; Mile 0; First Coast Guard District.
  - §117.1059(d) Snohomish River, Steamboat Slough, and Ebey Bay; Everett, WA; SR

2 Highway Bridges; Mile 6.9; Thirteenth Coast Guard District.

- §117.1059(h) Snohomish River, Steamboat Slough, and Ebey Bay; Marysville, WA;  
SR 529 Highway Bridge; Mile 1.6; Thirteenth Coast Guard District.

In accordance with §117.1059(h), the drawtender at the SR 529 Highway Bridge across Ebey Slough, mile 1.6 at Marysville would control the openings at that bridge and the openings for the SR 529 Highway Bridge across the Snohomish River, mile 3.6 at Everett and the twin, SR 529 Highway Bridges across Steamboat Slough, mile 1.1 and 1.2 respectively near Marysville; Monday through Friday. The drawtender at SR 529 Highway Bridge across the Snohomish River, mile 3.6 at Everett would control bridge openings at all other times. Due to the replacement of the SR 529 Highway Bridge across Ebey Slough, mile 1.6 at Marysville with a fixed bridge, the duties of the drawtender were no longer needed and are now the full responsibility of the drawtender at the SR 529 Highway Bridge across the Snohomish River, mile 3.6 at Everett. Operation and contact information for the bridges remains the same and this action will not affect waterway and land traffic.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to

control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). DHS considers this final rule to be a deregulatory action.

As previously explained the above 33 listed bridges, have either been removed from the waterway or converted/replaced to or by a fixed bridge. The removal of their operating schedules from 33 CFR 117 Subpart B will have no effect on the movement of waterway or land traffic, but will serve to remove an outdated and obsolete provision from the CFR.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

For the reasons stated in section IV.A above this final rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act



of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175,

Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.125 to read as follows:

§ 117.125 Black River.

The Union Pacific Railroad Bridge, mile 3.4 at Paoquet need not open for the passage of vessels.

§ 117.127 [Removed]

3. Remove § 117.127.

4. Revise paragraph (a) in § 117.139 to read as follows:

§ 117.139 White River.

(a) The draws of the St. Louis Southwestern railroad bridge, mile 98.9 at Clarendon, the Missouri Pacific railroad bridge, mile 196.3 at Augusta and the Missouri Pacific railroad bridge, mile 254.8 at Newport, shall open on signal if at least eight hours notice is given. The draws of any of these bridges need not be opened for a vessel that arrives later than two hours after the time specified in the notice, unless a second notice of at least eight hours is given.

\* \* \* \* \*

§ 117.261 [Amended]

5. Amend § 117.261 by removing and reserving paragraphs (b) and (qq).

§ 117.272 [Removed]

6. Remove § 117.272.

§ 117.287 [Amended]

7. Amend § 117.287 by removing paragraph (i).

§ 117.309 [Removed]

8. Remove § 117.309.

§ 117.317 [Amended]

9. Amend § 117.317 by removing paragraph (j) and redesignating paragraph (k) as paragraph (j).

§ 117.483 [Removed]

10. Remove § 117.483.

§ 117.521 [Removed]

11. Remove § 117.521.

§ 117.527 [Removed]

12. Remove § 117.527.

§ 117.529 [Removed]

13. Remove § 117.529.

§ 117.531 [Amended]

14. Amend § 117.531 by removing and reserving paragraph (c)(2).

§ 117.591 [Amended]

15. Amend § 117.591 by removing paragraph (b) and redesignating paragraphs (c) through (f) as paragraphs (b) through (e).

§ 117.599 [Removed]

16. Remove § 117.599.

§ 117.601 [Removed]

17. Remove § 117.601.

§ 117.605 [Amended]

18. Amend § 117.605 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

19. Revise § 117.609 to read as follows:

§ 117.609 Mystic River.

The draw of the S99 Alford Street Bridge, mile 1.4, shall open on signal; except that, Monday through Saturday, excluding holidays, the draw need not open for the passage of vessel traffic from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m., daily. From November 1 through March 31, between 3 p.m. and 7 a.m., at least an eight-hour advance notice is required for bridge openings by calling the number posted at the bridge.

§ 117.613 [Removed]

20. Remove § 117.613.

§ 117.738 [Removed]

21. Remove § 117.738.

22. Revise paragraph (n) in § 117.739 to read as follows:

§ 117.739 Passaic River.

\* \* \* \* \*

(n) West Eighth Street Bridge, mile 15.3, at Garfield need not open for the passage of vessels.

\* \* \* \* \*

§ 117.779 [Removed]

23. Remove § 117.779.

§ 117.805 [Removed]

24. Remove § 117.805.

25. In § 117.1059:

a. Revise paragraph (c).

b. Remove paragraphs (d) and (h).

c. Redesignate paragraphs (e), (f) and (g) as (d), (e) and (f).

d. Revise newly redesignated paragraph (f).

The revisions read as follows:

§ 117.1059 Snohomish River, Steamboat Slough, and Ebey Slough.

\* \* \* \* \*

(c) The draws of the twin, SR 529, highway bridges across the Snohomish River, mile 3.6, at Everett shall open on signal if notice is provided at least one hour in advance. Notice for openings shall be given by marine radio, telephone or other means to the drawtender at the twin, SR 529, Highway Bridges across the Snohomish River, mile 3.6. One signal opens both draws. During freshets, a drawtender shall be in constant attendance, and the draws shall open on signal when so ordered by the District Commander.

\* \* \* \* \*

(f) The draws of the twin SR 529, highway bridges across Steamboat Slough, miles 1.1 and 1.2, near Marysville, shall open on signal if notice is provided at

least four hours in advance. Notice for openings shall be given by marine radio or telephone to the drawtender at the twin, SR 529, Highway Bridges across the Snohomish River, mile 3.6. One signal opens both draws. During freshets, a drawtender shall be in constant attendance, and the draws shall open on signal when so ordered by the District Commander.

Brian L. Dunn  
Chief, Bridge Program,  
Coast Guard Headquarters.

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